IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18143 of 2003
with
SPECIAL CIVIL APPLICATION No 11135 of 2004
to
SPECIAL CIVIL APPLICATION No 11199 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FAKIRBHAI KODARBHAI RATHOD

Versus

MODASA NAGAR PALIKA

Appearance:

1. Special Civil Application No. 18143 of 2003
MR ASHISH M DAGLI for Petitioner No. 1-63
MR SA DESAI for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

2. Special Civil Application No. 11135 of 2004
MR ASHISH M DAGLI for Petitioner No. 1
..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 18/12/2004

ORAL JUDGEMENT

#. Rule. Mr.S.A. Desai, waives service on behalf of the respondent no. 1. Mr. Ashish Dagli seeks permission to delete respondent no. 2. Permission granted. At the joint request of the learned advocates, the petitions are taken up for final disposal today.

#. In this group of petitions, the petitioners have challenged the action of the respondents of initiating the proceedings to give the work of cleaning of the areas of Nagarpalika to private contractors by resolution dated 22.10.2003. The petitioners have contended that all of them are engaged as Safai Kamdar and are being paid the daily wages at the rates ranging from Rs. 70/- to Rs. 80/- per day. It is contended that though the petitioners have been doing this work since number of years, the cleaning work is sought to be given to private contractors by the respondent no.1-Nagarpalika and a resolution to that effect has also been passed on 22.10.2003. It was further contended that on account of adoption of the said policy, the petitioners would be rendered surplus and jobless.

#. Appearing for the petitioners, the learned advocate Mr. Ashish Dagli has submitted that most of the petitioners have been doing this kind of work since number of years and it would be unjust and improper at this stage to leave them without any employment when they have been doing this work satisfactorily and since long. It was also submitted that by resolution dated 22.10.2003, only some part of the cleaning work of the Nagarpalika is to be entrusted to the contractors and some of the petitioners, who are not engaged in those activities, which are enlisted in the resolution dated 22.10.2003, would still be required by the Nagarpalika and in any case, they should be continued and in due course of time should be made permanent.

#. After some discussion at the Bar, it appears that pursuant to the suggestion of the Court, the petitioners have formed a cooperative society and as and when the respondent invites parties to bid for the assignment of the work of cleaning, the petitioners would also apply. Considering the long service put in by almost all the petitioners, as and when the respondent decides the question of grant of contract, I am sure, the respondent will bear in mind the interest of large number of persons

who are working since long and whose services are, otherwise, satisfactory. Considering these aspects and also their previous experience, the respondent shall decide the question of granting of contract as and when such situation arises. Until such time such a decision is taken finally, it is provided that the present position of the petitioners' engagement will be continued.

#. Even after grant of contract, if there are areas where some of the petitioners are required to be continued to be engaged, though it may not be possible to grant their regularisation in view of the Full Bench decision of this Court in Amreli Municipality Vs. Gujarat Pradesh Municipal Employees Union, reported in 2004 (2) G.L.H. 692, the observations made in para 12.1.16 in the said decision, which read as follows, and directions contained therein, shall be followed.

"12.1.16 Before parting, we may like to observe that the unfortunate workmen who have continued for years as temporary employees and have succeeded before the Labour Court/Industrial Tribunal, in view of our decision, in the event of their termination, the authorities may see to it that no unqualified person is appointed in their place and their claim for regularisation be considered provided they are eligible on the sanctioned posts. If the posts are not sanctioned, the authorities may take such steps which are necessary in accordance with the provisions of law/rules/circulars within the budgetary provisions.

So far as to see that no irregularities committed in the matter of appointment by Panchayats, Municipalities and Corporations, in our opinion, it would be advisable if the State Government issues an appropriate circular giving details with regard to the aforesaid guidelines to all the local authorities."

#. In view of the above directions, the petitions are disposed of. Rule is made absolute in each of them to the above extent. No order as to costs. Interim relief modified in view of this order.

[AKIL KURESHI, J.]
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